2000

The State of Utah v. Thomas Eugene Davis : Brief of Respondent

Utah Supreme Court

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David S. Dolowitz; Guardian ad Litem; Dale R. Kent; Attorney for Petitioner-Appellant.

IN THE

SUPREME COURT

OF THE

STATE OF UTAH

STATE OF UTAH, in the interest of

RICKY WINGER

GERALDINE M. DAVIS,

Petitioner-Appellant.

Case No. 14368

RESPONDENT'S BRIEF

Appeal from Judgment of Second District Juvenile Court
for Salt Lake County
Honorable John Farr Larson

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STATEMENT OF NATURE OF THE CASE, ETC.

The State of Utah, represented by the Utah Attorney General, concurs with the Statement of the Nature of the Case, Dispostion of Lower Court, Relief Sought on Appeal, and Statement of Facts set forth in the Brief of the Guardian ad litem for the child herein.

ARGUMENT

UTAH CODE ANNOTATED, SECTION 55-10-109 (1953) AS AMENDED, IS NOT UNCONSTITUTIONAL AS BEING VOID FOR VAGUENESS, NOR WAS THE ABOVE-CITED STATUTE UNCONSTITUTIONALLY APPLIED TO APPELLANT.

Appellant argues that Utah Code Annotated, Section 55-10-109, (1953) as amended, establishes a standard which is impossible for a parent to ascertain in advance in order to avoid coming within the statute. Appellant cited several criminal cases to support her argument that the above statute is unconstitutional as being void for vagueness.

Certainly it is a well developed legal principle that a legislative act will not be declared unconstitutional unless, it clearly violated a constitutional provision, and every reasonable doubt will be resolved in favor of the validity of the statute. Tintic Standard Mining Company v. Utah County, 80 Utah 491, 15 P. 2nd 633 (1932). A statute will not be stricken or applied other than literally unless it is so unclear as to be totally beyond

reason or it contravenes a basic constitutional right. If the statute meets these tests the court will not question its wisdom, its effectiveness or the reasonableness of the procedure established. Rather, the court has a duty to let the statute operate as the legislature has determined. Gord v. Salt Lake City, 20 U. 2nd 138, 434 P.2nd 449 (1967).

The Supreme Court of Oregon faced an argument identical to that raised by Appellant herein in the case of State v. McMaster, 259 Ore. 291, 486 P. 2nd 567 (1971). The Oregon statute at issue in McMaster permitted termination of all parents rights if a parent or parents were found to be "unfit by reason of conduct or condition seriously detrimental to the child". O.R.S. 419.476 (1) This statute was challenged as being unconstitutionally vague.

The Oregon Supreme Court first stated that there are always three parties in an action brought under the termination of parental rights statute, the state, the parents and the child. In a criminal case only two parties are involved, the state and the individual charged. The constitutional issue must be examined with the interests of both parent and child in mind.

"What might be unconstitutional if only the parents' rights were involved is constitutional if the statute adopts legitimate and necessary means to protect the childs interests." State v. McMasters, 487 P. 2nd 567, at P. 569. The Court concluded that the Oregon termination of parental rights statute is not unconstitutional as being void for vagueness.

To further support this conclusion, the Court noted that the legislature would have extreme difficulty being more specific as to what conduct or condition would require the termination of all parental rights and still serve the primary purpose of caring for the welfare of the child. Only conduct and condition causing serious detriment to the particular child's welfare will be sufficient to terminate parental rights, the Court stated, and parents should be able to ascertain the intent of this statute as worded.

The California statute establishing jurisdiction over dependent or neglected children was challenged as being unconstitutionally vague in the case of In re J. T., 40 Cal. App. 3rd 633, 115 Cal. Rpts. 553 (1974). The statute at issue, West's Ann. California Welfare and Institutions Code, Section 600(a) provided that any child under 18 is dependent,

> "Who is in need of proper and effective parental care or control and has no parent or guardian, or has no parent or guardian willing to exercise or capable of exercising such care and control, or has no parent or guardian actually exercising such care and control."

The Appellant argued that it is impossible to conjecture, speculate or surmise what specific acts or conduct may be adjudged to indicate that a parent was not exercising or capable of exercising proper and effective parental control.

The California Court noted that a parent is entitled to due process, requiring notice of what conduct is prohibited by statute. But only reasonable certainty is required and a

statute will not be held void for uncertainty if its language is subject to any reasonable and practical construction. By reference to prior California case law, the Court determined that "parental control" means such control as parents ordinarily exercise, and includes the usual incidents of control over the child.

Thus, the California appellant court concluded that Section 600 (a) of the California Welfare and Institutions Code gives fair notice to a parent that in the proper care and support of a child the parent must exercise such control as parents ordinarily exercise, and thus the statute is not too indefinite to be enforced.

The statutory challenges brought before the Oregon and California Courts to juvenile court statutes raised questions identical to that at issue herein, namely that the statutes were unconstitutional as being void for vagueness. The McMasters and In re J. T. decisions are enlightening in that they focus upon the differing analysis an appellate court will utilize in examing criminal and civil statutes to determine whether the statute is void for vagueness. Most importantly the Oregon and California decisions support respondent's contention that the interests of both parent and child must be considered in determining the constitutionality of the Utah termination of parental rights statute, particularly the element under which the instant case arose, that is a finding of a condition on the part of Appellant

seriously detrimental to Ricky Winger.

A criminal statute proscribes conduct that is subject to punishment, in the form of a fine or incarceration. The Utah termination of parental rights statute has a very different focus, authorizing the juvenile court to terminate all parental rights if, as in the instant case, there is a finding that a parent has a condition causing serious detriment to the welfare of a child. The critical difference is that this statute is not designed as a punishment for parents, but rather as a protection for a child who suffers serious detriment because of parental conduct or condition, even though the parent may be without fault. Any civilized and enlightened society would provide such protection for its children.

Prior Utah cases brought before the the juvenile courts and Supreme Court of Utah pursuant to Utah Code Annotated, Section 55-10-109 (1953) as amended, indicate that only evidence establishing conduct or condition seriously detrimental to a particular child has been determined to be legally sufficient to terminate parental rights. State in Interest of A, 30 Utah 2nd 131, 514 P. 2nd 797 (1973); In re State in Interest of Jennings, 20 Utah 2nd 50, 432 P. 2nd 879 (1967); State in Interest of Mullen, 29 Utah 2nd 376, 510 P. 2nd 531 (1973). The reported case law of Utah supports the contention that Section 55-10-109 has been narrowly interpreted so as not to impinge upon the constitutional rights of parents allegedly coming within the statute.

In the instant case, Appellant also argues that Utah Code Annotated, Section 55-10-109 (1953) as amended, is unconstitutional

as implemented against her. However, as thoroughly articulated in the Guardian ad litem's response to Appellant's Point I, the evidence before the juvenile court on which the judge relied, establishes that Appellant's mental retardation and emotional status is a condition seriously detrimental to this particular child. The evidence established that Ricky Winger is microcephalic, hypotonic, mentally retarded, and developmentally delayed, all of which will require specialized care for the child. The evidence before the juvenile court simply does not give credence to Appellant's argument that the statute has been unconstitutionally implemented against her.

CONCLUSION

The Utah termination of parental rights statute, Utah Code Annotated, Section 55-10-109 (1953) as amended, is not unconstitutional as being void for vagueness. Further, the evidence presented at the juvenile court hearing fully answers Appellant's argument that the Utah termination of parental rights statute has been unconstitutionally applied against her. Respondent would respectfully ask the court to find that the above cited authority and argument fully supports the decision of the juvenile court.

DATED this 24th day of June, 1976.

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Assistant Attorney General